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U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF [redacted]

DATE: SEPT. 30, 2016

APPEAL OF NEBRASKA SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a public school, seeks to employ the Beneficiary as a special education teacher, lead. It requests classification of the Beneficiary as a member of the professions holding an advanced degree under the second preference immigrant classification. *See* Immigration and Nationality Act (the Act), section 203(b)(2), 8 U.S.C. § 1153(b)(2). This employment-based immigrant classification allows a U.S. employer to sponsor a professional with an advanced degree for lawful permanent resident status.

The Director, Nebraska Service Center, denied the petition. The Director determined that the record did not establish that the Beneficiary held the academic degree in a field of study required by the ETA Form 9089, Application for Permanent Employment Certification (labor certification).

The matter is now before us on appeal. The Petitioner contends that the record establishes that the Beneficiary did hold the advanced degree required by the labor certification as of the visa petition's priority date. It further asserts that the Director ignored the plain language of the labor certification in reaching his decision. Upon *de novo* review, we will dismiss the appeal.

I. ROLES OF USCIS AND DOL IN EMPLOYMENT-BASED IMMIGRANT VISA PROCESS

Employment-based immigration is generally a three-step process. First, an employer must obtain an approved labor certification from the U.S. Department of Labor (DOL). *See* section 212(a)(5)(A)(i) of the Act, 8 U.S.C. § 1182(a)(5)(A)(i). Next, the employer files a Form I-140, Immigrant Petition for Alien Worker, with U.S. Citizenship and Immigration Services (USCIS). *See* section 204 of the Act, 8 U.S.C. § 1154. If the Form I-140 is approved, the foreign national then applies for an immigrant visa abroad or, if eligible, adjustment of status in the United States. *See* section 245 of the Act, 8 U.S.C. § 1255.

The Petitioner's arguments on appeal rely, in part, on U.S. Department of Labor (DOL) guidance and a decision issued by the Board of Alien Labor Certification Appeals (BALCA). Accordingly, we will begin our consideration of the appeal by discussing the roles played by U.S. Citizenship and Immigration Services (USCIS) and DOL in the employment-based immigrant visa process.

The role of DOL in the employment-based immigrant visa process is set forth at section 212(a)(5)(A)(i) of the Act, which provides:

> Any alien who seeks to enter the United States for the purpose of performing skilled or unskilled labor is inadmissible, unless the Secretary of Labor has determined and certified to the Secretary of State and the Attorney General that-
>
> > (I) there are not sufficient workers who are able, willing, qualified (or equally qualified in the case of an alien described in clause (ii)) and available at the time of application for a visa and admission to the United States and at the place where the alien is to perform such skilled or unskilled labor, and
> >
> > (II) the employment of such alien will not adversely affect the wages and working conditions of workers in the United States similarly employed.

Neither of these responsibilities, nor the regulations implementing them under 20 C.F.R. § 656, involve a determination as to whether an offered position and a visa beneficiary are qualified for a specific immigrant classification.[1]

Therefore, it is DOL's responsibility to determine whether there are qualified U.S. workers available to perform the duties of an offered position, and whether the employment of a beneficiary will adversely affect similarly employed U.S. workers. It is USCIS' responsibility to determine whether the job offer to a beneficiary is a realistic one, whether that beneficiary qualifies for the offered position, and whether an offered position and a beneficiary are eligible for the requested immigrant visa classification.

II. LABOR CERTIFICATION REQUIREMENTS

In the present case, the offered position is special education teacher, lead and the Petitioner has checked Item 1.d. in Part 2 of the Form I-140 visa petition, indicating it is seeking to classify the Beneficiary as an advanced degree professional under section 203(b)(2) of the Act.

The regulation at 8 C.F.R. § 204.5(k)(2) defines the terms "advanced degree" and "profession." An "advanced degree" is defined as:

> [A]ny United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree. If a doctoral degree

[1] *See Madany v. Smith*, 696 F.2d 1008, 1012-1013 (D.C. Cir. 1983); see also *K.R.K. Irvine, Inc. v. Landon*, 699 F.2d 1006, 1008-09 (9th Cir. 1983); *Tongatapu Woodcraft Hawaii, Ltd. v. Feldman*, 736 F. 2d 1305, 1309 (9th Cir. 1984).

> is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree.

A "profession" is defined as "one of the occupations listed in section 101(a)(32) of the Act, as well as any occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation." Section 101(a)(32) of the Act lists the following occupations as professions: "architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries."

The requirements for the offered position are found in Part H. of the labor certification. This section, "Job Opportunity Information," describes the terms and conditions of the job offered. In this case, the labor certification states the following minimum requirements for the position of special education teacher, lead:

H.4.	Education: Master's.
H.4-B.	Major field of study: Special education.
H.7.	Alternate field of study: None accepted.
H.8.	Alternate combination of education and experience: None accepted.
H.9.	Foreign educational equivalent: Accepted.
H.11.	Job duties: Take a lead role in preparing and teaching lessons for elementary school grade level special education students that meet the needs as outlined in Arizona standards of instruction.
H.14.	Must have or be immediately eligible for AZ teacher certification in Special Education. Applicants with any suitable combination of education, training, and/or experience will be accepted.

Part J. of the labor certification reflects that the highest level of education, claimed by the Beneficiary relevant to the requested occupation is a master's degree in education from in the Philippines, completed in 2007.

When determining whether a beneficiary is eligible for a preference immigrant visa, USCIS may not ignore a term of the labor certification, nor may it impose additional requirements. *Madany*, at 1012-13. We must examine "the language of the labor certification job requirements" in order to determine what the job requires. *Id.* The only rational manner by which USCIS can be expected to interpret the meaning of terms used to describe the requirements of a job in a labor certification is to examine the certified job offer *exactly* as it is completed by the prospective employer. *See Rosedale Linden Park Company v. Smith*, 595 F. Supp. 829, 833 (D.D.C. 1984) (emphasis added). Our interpretation of the job's requirements must involve reading and applying the plain language of the alien employment certification application form. *Id.* at 834.

Moreover, the labor certification must be read as a whole. "The Form ETA 9089 is a legal document and as such the document must be considered in its entirety." *Matter of Symbioun Techs., Inc.*, 2010-PER-01422, 2011 WL 5126284 (BALCA Oct. 24, 2011) (finding that a "comprehensive

reading of all of Section H" of the ETA Form 9089 clarified an employer's minimum job requirements).

In the present case, the Director found the labor certification to require the Beneficiary to hold a master's degree in special education, and to indicate that the Petitioner would accept no other field of study. As he determined that the evidence of record did not demonstrate that the Beneficiary held the required degree in the specified field of study, the Director concluded that the Beneficiary did not have the required education to qualify for the offered position and denied the visa petition on this basis.

On appeal, the Petitioner contends that in denying the visa petition, the Director should not have focused solely on the master's degree requirement in Part H.4. of the labor certification. Instead, the Petitioner maintains, the Director should have considered the information provided in Parts H.9. and H.14., which, it asserts, further defines the job opportunity's requirements. The Petitioner maintains that its acceptance of a foreign educational equivalent in Part H.9. of the labor certification allows the Beneficiary to qualify for the offered position based on her bachelor's degree in economics from the and her completion of more than 30 credit hours in a master's program in special education at Alternately, the Petitioner asserts that its acceptance of a foreign degree and the inclusion of the language "any suitable combination of education, training and/or experience" in Part H.14. of the labor certification would allow the Beneficiary to qualify for the job opportunity under the advanced degree equivalent defined at 8 C.F.R. § 204.5(k)(2), i.e., a U.S. baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty.

To support its assertion that the affirmative response in Part H.9. of the labor certification would allow the Beneficiary to qualify for the offered position based on her completion of 30 credit hours toward a master's degree in special education at the Petitioner relies on guidance provided in a memorandum from Anna C. Hall, Acting Regional Administrator, Employment & Training Administration, DOL, *Interpretation of "Equivalent Degree,"* 2 (June 13, 1994). It asserts that the memorandum offers proof that the only reason to accept a foreign educational equivalent in Part H.9. of the ETA Form 9089 is when a foreign degree is not identical to the degree indicated in Part H.4. The Petitioner notes that the memorandum's example of a degree different from that specified in Part H.4. is where a beneficiary, like the Beneficiary in the present case, "has completed enough coursework in a related subject to afford him/her the equivalent of the specified degree."

However, the DOL guidance referenced by the Petitioner relates to the pre-PERM DOL labor certification process and, specifically, the proper annotation of the Form ETA 750, Application for Alien Employment Certification, in cases where a beneficiary possesses a degree that is "different from the one specified by the employer." As the memorandum was issued over ten years before PERM and the ETA Form 9089 were implemented, it does not explain the purpose of the question in Part H.9. of the ETA Form 9089, which asks: "Is a foreign educational equivalent acceptable?," a question that is not posed on the predecessor Form ETA 750, which is no longer used in the PERM

process.[2] As a result, the memorandum does not support the Petitioner's characterization of its acceptance of a foreign educational equivalent in Part H.9. of the instant labor certification as evidence of its willingness to accept a foreign degree that is other than an academic equivalent of the master's degree in special education required by Part H.4.

Instead, acceptance of a foreign educational equivalent in Part H.9. of an ETA Form 9089 simply indicates an employer's willingness to accept a foreign degree that is the foreign equivalent to a U.S. master's degree issued by a foreign college or university. It does not express, state, or define an employer's willingness to accept a combination of educational programs and/or experience determined to be equivalent to a master's degree. Rather, the ETA Form 9089 allows a petitioner to list an alternative field of study in Part H.7. or specify an alternate combination of education and experience in Part H.8. Here, the Petitioner did not indicate any field, or alternate combination of education and experience. Accordingly, the Petitioner's affirmative response to the question in Part H.9. demonstrates only that it will accept a foreign degree that is equivalent to the U.S. master's degree in special education stated in Part H.4. of the labor certification.

We also, as indicated in our November 12, 2015, NOID/RFE, do not find the Petitioner's inclusion of "any suitable combination of education, training, and/or experience" in Part H.14. of the labor certification to alter the master's degree requirement stated in Part H.4., which, the Petitioner asserts, would allow the Beneficiary to qualify for the offered position based on a combination of education and experience.

The regulation at 20 C.F.R. § 656.17(h)(4)(ii) states:

> If the alien beneficiary already is employed by the employer, and the alien does not meet the primary job requirements and only potentially qualifies for the job by virtue of the employer's alternative requirements, certification will be denied unless the application states that any suitable combination of education, training, or experience is acceptable.

The above regulation was intended to incorporate the BALCA ruling in *Francis Kellogg*, 1994-INA-465 and 544, 1995-INA 68 (Feb. 2, 1998) (en banc), that "where the alien does not meet the primary job requirements, but only potentially qualifies for the job because the employer has chosen to list alternative requirements, the employer's alternative requirements are unlawfully tailored to the alien's qualifications . . . unless the employer has indicated that applicants with any suitable combination of education, training or experience are acceptable." The statement that an employer will accept applicants with "any suitable combination of education, training or experience" is commonly referred to as "*Kellogg* language."

[2] On March 28, 2005, DOL implemented program electronic review management (PERM), which streamlined the permanent labor certification process. *See* 20 C.F.R. § 656.

We do not consider the presence of *Kellogg* language in Part H.14. of a labor certification to have any material effect on the interpretation of the minimum requirements of the job opportunity.

In the present case, the Petitioner indicated on the labor certification it filed with DOL that the offered position requires a U.S. master's degree in special education and allowed for acceptance of an equivalent foreign degree in the same field (Parts H.4., H.4-B., and H.9.). The labor certification also reflects the Petitioner's choice not to accept any alternate field of study or any alternate combination of education and experience in place of the required degree (Part H.8.). The Petitioner indicated in Part J.11. that the Beneficiary's highest level of education relevant to the required occupation was a master's degree. The Petitioner further checked "N/A," not applicable, in response to the question in Part J.19., "Does the alien possess the alternate combination of education and experience as indicated in question H.8?" In light of these responses, and reading the form as a whole, the *Kellogg* language in Part H.14. of the labor certification may not be interpreted as allowing the Beneficiary to qualify for the offered position based on a combination of education and experience. Conversely, if we accept the Petitioner's claim that any suitable combination of education, training and/or experience allows for a combination of education and experience, then the labor certification requirements might be satisfied with something less than an actual degree, which would not support classification under section 203(b)(2) of the Act, as an advanced degree professional.[3]

Therefore, for the reasons previously discussed, we find the underlying labor certification in this matter to establish the following requirements for the offered position of special education teacher, lead: a U.S. master's or its foreign degree equivalent in special education, and certification by the State of Arizona in special education or immediate eligibility for such certification. As the labor certification also stipulates that the Petitioner will not accept an academic degree in a field of study other than special education or any alternate combination of education and experience, the Petitioner must establish that the Beneficiary in this matter has an actual U.S. master's or foreign degree that is its equivalent in special education, supported by an official academic record. 8 C.F.R. § 204.5(k)(3)(i).

In addition to the above labor certification, the Petitioner, in response to our February 29, 2016, request for evidence (RFE), submitted a new, uncertified labor certification application for the Beneficiary. The job opportunity listed in the uncertified application is for a teacher,

[3] There is no provision in the statute or the regulations that would allow a beneficiary to qualify under section 203(b)(2) of the Act as a member of the professions holding an advanced degree with anything less than a full baccalaureate degree. Where the analysis of the beneficiary's credentials relies on work experience alone or a combination of multiple lesser degrees, the result is the "equivalent" of a bachelor's degree rather than a "foreign equivalent degree." In order to have experience and education equating to an advanced degree under section 203(b)(2) of the Act, the beneficiary must have a single degree that is the "foreign equivalent degree" to a United States baccalaureate degree. 8 C.F.R. § 204.5(k)(2). As explained in the preamble to the final rule, persons who claim to qualify for an immigrant visa by virtue of education or experience equating to a bachelor's degree may qualify for a visa pursuant to section 203(b)(3)(A)(i) of the Act as a skilled worker with more than two years of training and experience. 56 Fed. Reg. 60897, 60900 (Nov. 29, 1991).

rather than the offered position of special education teacher, lead indicated in the instant labor certification. We also find that the Petitioner has amended the new uncertified form to require a master's or foreign equivalent degree in education or a related field.[4] The uncertified application states in Part H.8. that the Petitioner will accept an alternate combination of education and experience in the form of a bachelor's degree and five years of employment experience. It restates the Petitioner's acceptance of these alternate requirements in Part H.14. As the Petitioner does not reference the uncertified labor certification in its response, its purpose in providing the form is unclear. However, in the event that the Petitioner has submitted the labor certification in support of the instant visa petition, we note that a labor certification may not be amended subsequent to its filing. 20 C.F.R. § 656.11(b). A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1988). Moreover, a labor certification must be certified when submitted in support of a visa petition. Accordingly, the uncertified labor certification provided by the Petitioner cannot be used to support the instant filing.

III. BENEFICIARY QUALIFICATIONS

A petitioner must establish a beneficiary's possession of all the education, training, or experience stated on an accompanying labor certification by a petition's priority date. 8 C.F.R. §§ 103.2(b)(1), (12); *see also Matter of Wing's Tea House,* 16 I&N Dec. 158, 159 (Acting Reg'l Comm'r 1977); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971).

The Petitioner initially submitted the following evidence related to the Beneficiary's qualifications:

- The Beneficiary's academic transcript from reflecting her completion of 30 education credits, as well as a July 24, 2007 certification of the transcript, which indicates that the Beneficiary, as of September 12, 2005, was enrolled in a Master's program in Education, majoring in Special Education. Where the certification leaves a blank for the date of graduation, it is annotated as "NOT APPLICABLE;"
- The Beneficiary's academic transcript from reflecting her completion of nine semester credit hours in the summer of 2007;
- The Beneficiary's 1999 Master of Arts degree in Economics from as well as her academic transcript;
- The Beneficiary's academic transcript from reflecting her completion of 20 semester credit hours during the summer and fall of 1992;
- The Beneficiary's 1988 Bachelor of Science degree certificate in Economics from the and her academic transcript;

[4] The record reflects that the Petitioner filed another visa petition on behalf of the Beneficiary on August 17, 2015, which was approved on December 15, 2015. The underlying labor certification with that petition, filed with DOL on February 11, 2014, also lists the job opportunity as that of a teacher, but requires the Beneficiary to have a U.S. bachelor's or foreign equivalent degree in education, but also allows for the requirements to be met specifically in a related field, as well as a current Arizona Department of Education teaching certificate.

- Two evaluations of the Beneficiary's academic credentials, one prepared by Professor of Education, the other written by President, and
- The Beneficiary's Arizona Provisional Cross-Categorical Special Education teaching certificate, which reflects that, between September 7, 2012, and September 7, 2015, she was authorized to teach Special Education classes, Kindergarten through Grade 12.

The Director, in his May 12, 2015, decision found the above documentation to establish that the Beneficiary had a master's degree in economics, which was not a field of study accepted by the labor certification. He denied the visa petition on this basis.

On appeal, the Petitioner first asserts that the Beneficiary is qualified for the offered position as she has the "foreign educational equivalent" of a master's degree in special education based on her completion of more than 30 credit hours toward a master's degree in special education, "including all requirements for the degree," at in the Philippines. As proof that the Beneficiary has the completed credit hours to qualify her for the offered position, the Petitioner points to the 1994 DOL memorandum from Anna C. Hall, which states the following:

> Only in cases where the alien has a degree which is different from the one specified by the employer is it necessary to include 'or equivalent' after the specified degree. Example of when the acceptability of an equivalent must be specified: when the alien has completed enough coursework in a related subject to afford him/her the equivalent of the specified degree (other than the degree actually awarded by the university).

The Petitioner also asserts that the above guidance is supported by the 1988 BALCA decision in *Matter of Productivity Improvements, Inc.*, which, it states, found no difference between the award of an academic degree and the completion of all requirements for that degree.

Alternatively, the Petitioner maintains that the Beneficiary's bachelor's degree in economics from the combined with her years of employment in the field of special education are sufficient to establish that she holds a foreign equivalent degree to a master's in special education. In support of its position, the Petitioner points to a Memorandum from Michael D. Cronin, Acting Associate Commissioner for Programs, and William R. Yates, Deputy Executive Associate Commissioner for Operations, U.S. Immigration and Naturalization Service (INS), AD00-08, *Educational and Experience Requirements for Employment-Based Second Preference (EB-2) Immigrants* (March 20, 2000).

A. Eligibility Based on Completion of Coursework for Master's Degree

The Petitioner contends that the opinions expressed in the 1994 DOL memorandum and BALCA decision should establish the Beneficiary's academic qualifications for the offered position. However, as previously discussed, the authority for determining whether a beneficiary is qualified

for the job opportunity identified in a labor certification lies with USCIS. Therefore, a USCIS determination as to whether a beneficiary may satisfy a degree requirement through the completion of all requirements for that degree is not dictated or constrained by DOL guidance or BALCA decisions, although we may take note of the reasoning in such guidance and decisions when similar issues are before us.[5]

Accordingly, in our November 12, 2015, NOID/RFE, we requested evidence to establish that the Beneficiary had completed all requirements for a master's degree in education at However, we also notified the Petitioner that we required documentary evidence establishing this claim, as an online review of the university's requirements for a master of education in special education indicated that both its thesis and non-thesis graduate programs required at least 36 credits, not the 30 credits reflected on the Beneficiary's academic transcript. The NOID/RFE, therefore, asked for an original letter or statement from an appropriate official regarding the Beneficiary's completion of all degree requirements, one indicating whether the degree program completed by the Beneficiary required a thesis and, if so, whether she had completed this requirement.

In its February 9, 2016, response to the NOID/RFE, the Petitioner submitted a December 8, 2015, certification signed by Ph.D., University Registrar, The certificate states that the Beneficiary was admitted to the university for the 2005-06 school year and completed "the required number of units to earn the degree" for a master of arts in education, with a major in special education. It did not, however, state that she had completed all the requirements for that degree.

Therefore, on February 29, 2016, we issued a new RFE to the Petitioner, again requesting a statement or letter from establishing the Beneficiary's completion of all requirements for a master's degree in special education, and asking for confirmation of the Beneficiary's completion of any thesis requirement.

In its response, received on May 4, 2016, the Petitioner indicates that the Beneficiary is unable to acquire another letter from but does not explain why this is the case or document any unsuccessful attempts that it or the Beneficiary may have made to obtain the requested evidence. The Petitioner cannot meet its burden of proof in this matter simply by claiming a fact to be true, without supporting documentary evidence. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)); *see also Matter of Chawathe*, 25 I&N Dec. 369 (AAO 2010). The Petitioner must support assertions with relevant, probative, and credible evidence. *Chawathe*, at 369. Therefore, for the reasons already articulated in our November 12, 2015, NOID/RFE and above, we cannot conclude that the Beneficiary's completion of 30 credits toward a master's degree in special education at

[5] The only administrative decisions that bind us in this matter are the decisions of this office, the Board of Immigration Appeals (BIA), and the Attorney General, which are selected and designated as precedent decisions by the Secretary of Homeland Security, the BIA, and the Attorney General, respectively. Precedent decisions must be designated and published in bound volumes or as interim decisions. 8 C.F.R. § 103.9(a).

represents the completion of all requirements for master's degree in education.

In considering the Beneficiary's qualifications for the offered position, we have also reviewed the two evaluations of the Beneficiary's academic qualifications found in the record. Neither, however, finds the Beneficiary's 30 credits toward a master's degree to represent the completion of all degree requirements for a master's in special education. The December 6, 2007, evaluation written by President, states only that the Beneficiary has 30 semester credit hours toward a master of education in special education. While also finds the Beneficiary to hold the foreign degree equivalents of U.S. bachelor's and master's degree in economics, these degrees do not qualify her for the offered position as they are not in special education, the only field of study allowed by the labor certification. She also concludes that the Beneficiary, in addition to the 30 semester credits hours just noted, has the U.S. equivalent of 20 semester credit hours of undergraduate coursework in education, plus 9 semester credit hours in education, with an emphasis on teaching reading. The Beneficiary's accumulation of academic credits is not, however, the master's degree required by the labor certification.

The March 5, 2014, evaluation prepared by Professor of Education, also indicates only that the Beneficiary completed 30 credits of graduate coursework at She finds the Beneficiary to have the equivalent of a master's degree in special education based on a combination of education and experience, which, as discussed below, is not allowed by the labor certification, and not accepted to establish that the Beneficiary has an actual degree in the required field of study.

For the reasons just noted, the Petitioner's claim that the Beneficiary's completion of the requirements for a master's degree in special education at should be viewed as the foreign equivalent of the master's degree in the required field on the labor certification is not persuasive. Accordingly, the Petitioner has not established that, as of the visa petition's priority date, the Beneficiary held the foreign degree equivalent to a U.S. master's degree in special education.

B. Eligibility Based on Education and Experience

The Petitioner on appeal also maintains that its acceptance of a foreign degree equivalent in Part H.9. of the labor certification and its inclusion of *Kellogg* language in Part H.14. allow the Beneficiary to qualify for the offered position based on her bachelor's degree in economics from the and her years of employment in the field of special education. In support of this claim, the Petitioner submits the previously noted March 20, 2000, INS memorandum from Michael D. Cronin and William R. Yates, which discusses the review of blocks 14 and 15 of the Form ETA 750, the predecessor form no longer in use, when determining whether an offered position requires an advanced degree professional.

However, while we agree that a beneficiary may qualify for classification as an advanced degree professional under section 203(b)(2) of the Act based on a baccalaureate degree and at least five

years of progressive post-baccalaureate experience, Part H.8. of the instant labor certification indicates that the Petitioner will not accept a combination of education and experience in this matter. Further, Part J.19. of the labor certification reflects that an alternate combination of education and experience is not applicable and Part J.11. states that the Beneficiary qualifies for the offered position based on the required degree of a master's in special education. Reading the ETA Form 9089 as a whole, we find no evidence to indicate that the Petitioner sought to rely on a combination of a bachelor's degree and five years of experience in filling the offered position. Neither does the record show that the Petitioner allowed for, or recruited for, a job opportunity based on any alternate combination of education and experience in the specific form of a bachelor's degree plus five years of experience. Therefore, the Petitioner may not establish the Beneficiary's qualifications for the offered position based on her Philippine bachelor's degree and her experience as a special education teacher.

As the labor certification does not allow the Beneficiary to qualify for the offered position based on a combination of education and experience, documentation related to the Beneficiary's employment in special education will not meet the requirements of the certified labor certification.

IV. CONCLUSION

To qualify for the offered position of special education teacher, lead, the labor certification in this matter requires the Beneficiary to have an actual master's or foreign equivalent degree in special education, which, pursuant to 8 C.F.R. § 204.5(k)(3)(i), must be demonstrated by an official academic record. However, for the reasons previously discussed, the record does not establish that, as of the priority date of the visa petition, the Beneficiary had the degree in the field required by the labor certification. Accordingly, the Beneficiary is not qualified for the offered position and we will affirm the Director's denial of the visa petition.

In visa petition proceedings, it is a petitioner's burden to establish eligibility for the immigration benefit sought. INA section 291, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I& Dec. 127, 128 (BIA 2013). Here that burden has not been met. We will, therefore, dismiss the appeal.

ORDER: The appeal is dismissed.

Cite as *Matter of* ID# 16274 (AAO Sept. 30, 2016)